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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 DANIEL TONNEMACHER and
8 KATHLEEN TONNEMACHER,

9 Plaintiffs,

10 v.

11 STATE OF CALIFORNIA; STATE OF
12 IDAHO; STATE OF WASHINGTON;
13 COUNTY OF KITTITAS, WASHINGTON;
14 COUNTY OF BONNER, IDAHO; COUNTY
15 OF PLACER, CALIFORNIA; US SOCIAL
16 SECURITY; APPLE HEALTH;
17 WASHINGTON SUPERIOR COURT,
18 ELLENSBURG; PRESTIGE-POST ACUTE
19 CARE; PRUDENTIAL INSURANCE; and
20 DOES ONE THRU 20, US CITIZENS AS
INDIVIDUALS,

Defendants.

NO. 1:19-CV-3209-TOR

ORDER OF DISMISSAL
WITHOUT PREJUDICE

BEFORE THE COURT is Plaintiffs' Response to Clerk's Notice & Request
for Hearing or Decision (ECF No. 3). The Court has reviewed the record and files

1 herein, and is fully informed. For the reasons discussed below, this action is
2 dismissed without prejudice.

3 **BACKGROUND**

4 On September 9, 2019, Plaintiffs Daniel Tonnemacher and Kathleen
5 Tonnemacher, proceeding *pro se*, filed what is construed as a civil complaint. ECF
6 No. 1. No accompanying filing fee or in forma pauperis application was filed. On
7 September 9, 2019, the Clerk of Court sent Plaintiffs a Notice of Deficient Filing
8 explaining that the

9 failure to pay the prescribed Civil Complaint filing fee, OR in lieu of
10 payment of the filing fee, to file the appropriate Application to
11 Proceed In Forma Pauperis (IFP) by 9/23/2019, may subject this case
to dismissal by the Court without further notice or opportunity for
hearing.

12 ECF No. 2.

13 On September 24, 2019, Plaintiffs filed a Response to Clerk's Notice,
14 without signature. ECF No. 3. Plaintiffs responded, inter alia, "Tonnemachers
15 will not pay any money for access. . . Tonnemachers have already [f]iled IFP
16 papers." *Id.* at 1.

17 No IFP papers have been filed in this proceeding. The Tonnemachers filed
18 for and were granted in forma pauperis status in 2017 in case number 1:17-CV-
19 3053-TOR. That case was eventually dismissed and IFP status revoked for failure
20 to state a claim. The Court allowed the Tonnemachers to amend the complaint,

1 extended the time within which to do so, but no amendment to the complaint was
2 ever filed. The Tonnemachers appealed that decision to the Ninth Circuit. The
3 Ninth Circuit denied their motion to proceed in forma pauperis and dismissed the
4 appeal as frivolous.

5 Additionally, the Tonnemachers filed an in forma pauperis application in
6 case number 1:18-CV-3002-TOR. The application was not properly completed
7 and the Tonnemachers were granted additional time within which to submit a
8 properly completed application. A second application was submitted, but it too
9 was not completed properly. Consequently, in forma pauperis status was not
10 granted and the file was closed.

11 Parties filing actions in the United States District Court are required to pay
12 filing fees. 28 U.S.C. § 1914(a). An action may proceed without the immediate
13 payment of a filing fee only upon granting of in forma pauperis status. *See* 28
14 U.S.C. § 1915. Failure to pay the statutory filing fee will result in dismissal of
15 these actions without prejudice. *See Olivares v. Marshall*, 59 F.3d 109, 112 (9th
16 Cir. 1995) (district court has authority to dismiss without prejudice prisoner
17 complaint for failure to pay partial filing fee); *In re Perroton*, 958 F.2d 889, 890
18 (9th Cir. 1992) (affirming dismissal of appeal of pro se litigant for failure to pay
19 required filing fees).

1 Here, Plaintiffs affirmatively refuse to pay the filing fee required to
2 commence a civil action; and have not submitted a properly completed Application
3 to Proceed In Forma Pauperis. Therefore, the case must be dismissed pursuant to
4 28 U.S.C. § 1914(a), without prejudice.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 This action is DISMISSED without prejudice for failing to pay the filing fee
7 or file a properly completed Application to Proceed In Forma Pauperis pursuant to
8 28 U.S.C. §§ 1914(a) and 1915(a).

9 The District Court Executive is directed to enter this Order, enter judgment
10 accordingly, furnish copies to Plaintiffs, and **CLOSE** the file.

11 **DATED** October 31, 2019.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge